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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re JOSIE P., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

ELIZABETH M.,

Defendant and Appellant.

G042326

(Super. Ct. No. DP014125)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Jane Shade,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed and remanded.

Michelle L. Jarvis, under appointment by the Court of Appeal, for
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen, Deputy
County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

* * *

Elizabeth M. (Mother) appeals from the May 18, 2009 juvenile court order terminating her parental rights to Josie P. pursuant to Welfare and Institutions Code section 366.26. Josie's presumed father (C.C.) and Josie's alleged father (Albert P.) are not parties to the appeal.

Mother argues the juvenile court and Orange County Social Services Agency (SSA) failed to comply with the notice requirements of the Indian Child Welfare Act, 25 United States Code section 1901 et seq. (ICWA), and the ICWA notice requirements set forth in the California Rules of Court. At the detention hearing, Mother stated she might have a little American Indian blood. The juvenile court responded: "At this time[,] I'll indicate it might apply. I'm going to have to make that finding." The court never made ICWA findings. There is no evidence that SSA provided notice pursuant to ICWA. (25 U.S.C. § 1912(a); see Cal. Rules of Court, rule 5.481; *id.*, former rules 1439(f), 5.664.)

County counsel concedes the juvenile court and SSA failed to comply with ICWA. County counsel requests that we reverse the order terminating parental rights and remand solely for the purposes of ICWA compliance, as illustrated by the disposition in *In re Nikki R.* (2003) 106 Cal.App.4th 844, 855-856.) We agree.

Accordingly, the order terminating Mother's parental rights is reversed, and the matter is remanded to the juvenile court with directions to (1) appoint trial counsel for Mother, C.C., and Albert P.; (2) direct SSA to comply with the notice procedures under ICWA and California Rules of Court, rules 5.481 and 5.482; and (3) set an ICWA notice review hearing. At the ICWA notice review hearing, the juvenile court shall review, and allow counsel to review, SSA's ICWA notice and any responses. In addition, the juvenile court shall allow counsel to argue the matter, and shall make an order determining whether ICWA applies. If ICWA applies, the juvenile court shall proceed according to the dictates of ICWA. If ICWA does not apply, and ICWA notice is found to be sufficient, then the juvenile court shall reinstate its order terminating parental rights

and other orders issued May 18, 2009, subject to the juvenile court's consideration of any circumstances that might have arisen during this appeal that might affect the outcome.

The remittitur shall issue forthwith.

FYBEL, J.

WE CONCUR:

ARONSON, ACTING P. J.

IKOLA, J.